United Nations A/66/7/Add.19

General Assembly

Distr.: General
14 December 2011

Original: English

Sixty-sixth session
Agenda item 134
Proposed programme budget for the biennium 2012-2013

Request for a subvention to the Special Court for Sierra Leone

Twentieth report of the Advisory Committee on Administrative and Budgetary Questions on the proposed programme budget for the biennium 2012-2013

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the request for a subvention to the Special Court for Sierra Leone (A/66/563). During its consideration of the report, the Advisory Committee met with the Registrar and other representatives of the Special Court, as well as with representatives of the Secretary-General, who provided additional information and clarification.

2. The report of the Secretary-General is submitted pursuant to section XII of General Assembly resolution 65/259, by which the Assembly, inter alia, took note of the resource requirements of the Special Court for Sierra Leone until its closure, authorized the Secretary-General, as an exceptional measure, to enter into commitments in an amount not to exceed $9,882,594 to supplement the voluntary financial resources of the Court for the period from 1 January to 31 December 2011, and requested the Secretary-General to report to the Assembly at its sixty-sixth session on the implementation of that resolution. According to the Secretary-General, his report is also intended to bring to the attention of the Assembly the continuing financial constraints faced by the Court, despite the efforts of its key donors, as well as the updated timeline for the completion of the Court's work (A/66/563, para. 1).

II. Request for a subvention to the Special Court for Sierra Leone

3. In its previous report on this issue the Advisory Committee gave an overview of the historical background to the financing of the Special Court and of the progress made by the Court towards the achievement of its mandate (see A/65/603,

Please recycle

paras. 3-8). Since the submission of that report, however, the Committee notes that unforeseen developments in the Court's last trial, the *Prosecutor v. Charles Ghankay Taylor*, have resulted in a shift in the milestones set out in the approved June 2010 completion strategy, which foresaw the completion of all trials and appeals by February 2012. Consequently, in May 2011, the judges of the Court reviewed the June 2010 completion strategy and established new milestones (A/66/563, paras. 12-15). The Secretary-General indicates in paragraph 15 of his report that a judgement on the merits of the Taylor case is now expected to be issued in December 2011 (rather than June 2011, as previously anticipated) and that a sentencing judgement, if any, will follow approximately six to eight weeks later. On the basis of the new milestones and the expectation that appeals proceedings will probably take six months from the delivery of a sentencing judgement, an appeals judgement, if applicable, is projected for July 2012 (rather than February 2012, as previously anticipated). The Secretary-General also indicates, in paragraph 16 of his report, that two unforeseen contempt cases are ongoing before the Court. Those cases will be conducted in parallel with the Taylor proceedings. It is the Committee's understanding that, if the new milestones are adhered to, the Court will now complete its work by the end of July 2012.

4. Annex III to the Secretary-General's report provides an overview, in tabular form, of the Special Court's post requirements as at 1 November 2011 (table 1) and the drawdown staffing plan for the period from November 2010 to July 2012 (table 2). The Advisory Committee notes from table 2 that between December 2011 and January 2012 the total number of staff will increase from 66 to 88. The Committee was informed, in this regard, that the actual number of staff as at November 2011 stood at 92. It was clarified to the Committee that the staffing projections for late 2011 and early 2012 had been made before the delay in the delivery of the Taylor judgement and other unforeseen developments, such as the initiation of contempt proceedings and critical staff turnover, were known. Accordingly, when the Court reviewed its staffing levels in the light of those developments, posts in areas such as security, court management and administrative services had to be extended to address the additional workload.

5. The Advisory Committee notes from paragraph 17 of the report of the Secretary-General that the Special Court has made significant progress in preparing for its transition to the Residual Special Court for Sierra Leone. This issue is discussed in greater detail in section III below. As indicated in paragraph 36 of the Secretary-General's report, the Court has also made significant progress with its liquidation. The Management Committee approved the Court's liquidation policy in June 2010 and an addendum thereto in February 2011. Since then, the Court has identified and certified its assets and the 2010 audits of accounts and assets have been completed. The Court is now occupying only one third of its original site in Freetown, with a resulting decrease in fuel consumption. Witness safe houses have been closed and the Court is working with the Government of Sierra Leone and other stakeholders to convert the Security Building to a Peace Museum. A phased liquidation of movable assets that are not needed for current operations is now in progress. Upon enquiry, the Committee was informed that, in accordance with article 12 of the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Residual Special Court for Sierra Leone, the assets of the Court were to be disposed of through donation to the Government of Sierra Leone. Accordingly, there would be no income from the liquidation of assets.

6. Section IV of the Secretary-General's report outlines the current financial position of the Special Court. As indicated in paragraph 18, the previously approved budget for 2011 amounted to $12,290,500. However, owing to the unforeseen shift in milestones referred to above, the revised approved budget for 2011 has increased by $3,722,900 to $16,013,400. As indicated in annex I to the report, the cash balance brought forward as at 1 January 2011 amounted to $2,671,664. Voluntary contributions received from 1 January to 31 October 2011 amounted to $4,815,934 and, as at 31 October 2011, $8,525,802 of the subvention of up to $9,882,594 approved by the General Assembly in its resolution 65/259 had been used. Accordingly, the Advisory Committee notes that no further resources are required for operations in 2011, as the total revised budget is adequately covered by the approved subvention and voluntary contributions. Upon enquiry, the Committee was informed that the unused portion of the subvention for 2011 would be returned to Member States in accordance with the established procedures. The Committee notes, in this regard, that the Special Court has demonstrated prudence in the management of previous subventions granted to it: commitment authorities requested in 2004 and 2005 were not fully utilized, and in 2006 a higher-than-anticipated unspent balance was surrendered in accordance with regulation 5.3 of the Financial Regulations and Rules of the United Nations (A/66/563, paras. 10 and 11). **The Committee commends the Special Court for its prudent use of resources.**

7. As indicated by the Secretary-General in paragraph 19 of his report, the previously approved budget for 2012 was $2,356,750. The revised approved budget for 2012 amounts to $9,066,400. Information on resource requirements by component and by object of expenditure is set out in annex II to the report. Since no voluntary contributions or pledges have been received for 2012 (see A/66/563, para. 19), the Secretary-General is seeking the approval of the General Assembly for a subvention of up to $9,066,400 for the Special Court to enable it to complete its mandate. In this connection, the Advisory Committee notes that any subvention approved by the Assembly would be disbursed by the Organization to the Court in the same way as for previous subventions: that is, the funds would be transferred to the Court by the Controller on an incremental basis and adjusted according to the status of voluntary contributions. The Registrar would be required, in this regard, to provide the Controller with monthly statements of all expenditure and income, and the existing arrangements for internal and external audit services would remain in place. **The Committee reiterates its earlier observation regarding the need for ongoing oversight of the management of the Special Court's assets** (see A/65/603, para. 14).

8. With regard to the level of voluntary contributions, the Advisory Committee was informed, upon enquiry, that, while the United Nations Secretariat had not sent a fund-raising appeal letter to Member States in 2011 because of the global financial crisis, since November 2010 senior officials of the Special Court had held approximately 70 fund-raising meetings in The Hague, New York and Freetown, as well as in other capital cities. In addition, in November 2011, the Court had sent out 52 fund-raising appeal letters to New York-based ambassadors of countries that had contributed to it in the past. The Committee was further informed that the Court still intended to send out end-of-year appeal letters to representatives of the member States of the European Union in Brussels and contacts at the European institutions, and that once a scheduling order for the delivery of the trial judgement in the Taylor case had been issued, fund-raising efforts would be intensified. Meetings would be held with diplomatic missions of various countries, and a briefing by the President

and Prosecutor of the Special Court would also be held. **The Committee regrets the situation whereby, to date, the Court has been unsuccessful in securing voluntary funding for 2012 and expects that the Management Committee and other senior officials of the Court will engage in vigorous fund-raising efforts for as long as the Court remains operational. In this connection, the Committee also encourages the Court to do more to broaden its donor base.**

9. The Advisory Committee recalls that, in its previous report on this issue, it noted that the Special Court for Sierra Leone, as the first of the international tribunals to complete its work, would serve as a reference for best practices and lessons learned for other international tribunals and courts. The Committee therefore encouraged the Court to keep a comprehensive documentary record of all best practices and lessons learned so that other international tribunals could benefit from its experiences (A/65/603, para. 8).

10. Upon enquiry, the Advisory Committee was informed that the following steps had been taken to respond to that recommendation:

(a) In 2011, the Office of the Prosecutor had organized a colloquium on best practices and lessons learned for the prosecutors from all the international tribunals;

(b) The Office of the Prosecutor was working with its counterparts in the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, the Extraordinary Chambers in the Courts of Cambodia and the Special Tribunal for Lebanon on a project to consolidate in a single publication all the best practices and lessons learned by each office in investigating and prosecuting international crimes. The expected publication date was early 2012;

(c) With the support of the Government of Canada and in coordination with the International Centre for Transitional Justice, the Registry of the Special Court was planning a legacy conference to document best practices and lessons learned in all areas;

(d) The Registrar of the Special Court had exchanged ideas with the registrars of other international tribunals on how to downsize while at the same time retaining critical staff, as well as on archiving;

(e) Since November 2010, the Special Court had participated in approximately 40 events relating to the sharing of best practices and lessons learned with other courts, tribunals and institutions at the international and national levels in areas such as witness protection, prosecutorial and investigative strategies, outreach and residual and legacy issues.

The Committee notes the steps taken to identify and document best practices and encourages the Special Court to continue its efforts in this regard.

11. The Advisory Committee notes that the Secretary-General, with the consent of the Security Council, first approached the General Assembly with a request for a subvention to the Special Court in 2004 (see S/2004/182 and 183). The Committee further notes that, since then, the Court has received financing through the regular budget of the United Nations on various occasions. **In view of the importance of the activities undertaken by the Court, and bearing in mind the progress it has made to date towards the achievement of its mandate, the Committee recommends that the Assembly approve, as an exceptional measure, a subvention of up to $9,066,400 for the period from 1 January to 31 July 2012**

intended to supplement any voluntary contributions received so that the Court can complete its work. The Committee recommends that the Assembly:

(a) Authorize the Secretary-General to enter into commitments in an amount not to exceed $9,066,400 for the period from 1 January to 31 July 2011 for a subvention to the Special Court for Sierra Leone;

(b) Request the Secretary-General to report to the General Assembly at its sixty-seventh session on the implementation of the subvention during the biennium 2012-2013 and on the status of voluntary contributions for the Special Court.

12. The Advisory Committee stresses that its recommendation in the preceding paragraph is made on the basis that, in accordance with section XII, paragraph 6, of General Assembly resolution 65/259: (a) any regular budget funds appropriated for the Special Court will be refunded to the United Nations at the time of the liquidation of the Court, should sufficient voluntary contributions be received; and (b) the United Nations Secretariat, the Management Committee, the Registrar and other senior officials of the Special Court will intensify their efforts to fund the activities of the Court through voluntary contributions. The Advisory Committee expects that there will be no further requests for subventions to the Special Court.

III. Residual and legacy activities

13. In section V, paragraphs 22 to 30, of his report, the Secretary-General describes the residual activities that will take place after the closure of the Special Court in July 2012. He indicates, inter alia, that in August 2010 the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Residual Special Court for Sierra Leone was finalized. The Advisory Committee was provided, upon request, with a copy of the Agreement, which includes the statute of the Residual Special Court. The Committee was also informed, upon enquiry, that unlike the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, which had been established by the Security Council under Chapter VII of the Charter of the United Nations, the Special Court had been created by means of an Agreement between the United Nations and the Government of Sierra Leone. The Residual Special Court was also a treaty-based organization, having been established by means of a further Agreement between the same two parties.

14. The Secretary-General also indicates in his report that the statute of the Residual Special Court enumerates the residual functions, both ongoing and ad hoc, to be carried out by that body, and guarantees continuity of the Special Court's jurisdiction, rights and obligations. The Advisory Committee notes, in particular, that the Residual Special Court will have the power to prosecute the one remaining fugitive, Johnny Paul Koroma, if his case is not referred to a competent national jurisdiction.

15. The Advisory Committee further notes from the Secretary-General's report that, pursuant to article 6 of the Agreement on the Establishment of a Residual Special Court, the latter is to carry out its functions at an interim seat in The Hague, with a branch or sub-office in Freetown for witness protection and support and coordination of defence issues, until such time as the parties to the Agreement

decide otherwise. The Secretary-General also indicates that ongoing functions will be managed by a total of seven permanent staff in both offices, and that, rather than recruiting additional staff or consultants to prepare for the transition to the Residual Special Court, the required legal, technical and logistical work is being done by existing staff in addition to their regular duties (A/66/563, paras. 24-27). **The Committee encourages the Special Court to continue its efforts to minimize human resources requirements for the Residual Special Court.**

16. Upon request, the Advisory Committee was provided with a copy of the preliminary budget of the Residual Special Court. The Committee was informed that requirements for ongoing residual functions for the first year of operations amounted to $1,625,300. The requirements for ad hoc residual judicial proceedings, if applicable, would amount to a maximum of $1,537,200 per annum.

17. The Advisory Committee notes that, pursuant to article 3 of the Agreement on the Establishment of a Residual Special Court, the expenses of the latter are to be borne by voluntary contributions from the international community. **The Committee trusts that effective fund-raising methods will be adopted so as to ensure that sufficient voluntary contributions are secured for the Residual Special Court.**